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TRAFFIC ROOM
October 28, 2005

VIA HAND DELIVERY

Hon. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition to Establish Generic Docket to Consider Amendments to
Interconnection Agreements Resulting from Changes of Law*
Docket No. 04-00381

*Petition of DIECA Communications, Inc., d/b/a Covad Communications
Company for Arbitration of Interconnection Agreement Amendment
with BellSouth Telecommunications, Inc., Pursuant to Section 252(b)
of the Telecommunications Act of 1996*
Docket No. 04-00186

Dear Chairman Jones:

On October 18, 2005, Covad filed a letter in the dockets listed above in which it claimed that BellSouth made various misrepresentations. BellSouth takes great exception to Covad's comments, and files this response so that the record is clear. The October 18 Covad letter does not identify misrepresentations by BellSouth at all. Instead, when each assertion is reviewed in context (as set forth below), it is clear that the October 18 Covad letter is nothing more than a rehash of Covad's arguments and flawed legal theories.

As BellSouth indicated in its September 30, 2005 letter, it is and was accurate for BellSouth to state that the Maine decision "turns on the commitment Verizon made to tariff 271 UNEs in Maine." The Maine Commission was explicit in this regard, stating, in relevant part:

- Prior to our September 3rd Order, the competitive local exchange carriers (CLECs) contended that Verizon was required to include its Section 271 unbundling obligations in its state wholesale tariff. Verizon argued that the FCC had exclusive jurisdiction over matters relating to its 271 obligations and that this Commission had no authority to require Verizon to amend its wholesale tariff to include its 271 obligations. In our September 3rd Order, we found that we had authority under both federal and state law **to interpret and enforce the commitment Verizon made in Docket No. 2000-849 to file a wholesale tariff.** (Maine Order, p. 2).

In citing to an earlier order, the Maine Commission explained:

- The FCC's statement regarding enforcement of state 271 commitments, **and our significant experience with the issues associated with the wholesale tariff, provide us with legal authority and substantive expertise to enforce Verizon's wholesale tariff commitment. We exercise this authority by requiring Verizon to honor the commitment it made to us ...** (Maine Order, p. 2).

Before its issue-by-issue analysis, the Maine Commission stated:

- We find we have authority to make such determinations, absent an order from the FCC making specific contrary findings, under Sections 251, 252 and 271 of the TelAct **and under the terms of Verizon's commitment to file a wholesale tariff in our 271 Proceeding.** (Main Order, p. 6).

While Covad may wish to direct the Authority's attention to the "excerpts" of the Maine Order of its choosing, it is wrong to accuse BellSouth of misrepresenting anything, particularly given the language that BellSouth has emphasized above. In any event, the Maine Order speaks for itself, and the Authority is fully capable of evaluating it and according it the weight it deems appropriate.

If the Authority believes its time is well served in reviewing the Maine Order in part or in whole, BellSouth would direct the Authority to a statement that Commission made at page 3, "On April 1, 2005, Verizon filed a Complaint for Declaratory Judgment and Injunctive Relief in the Federal District Court of Maine seeking to overturn our September 3rd and March 17th Orders."

The Maine Commission indicated that the pending appeal of its earlier decisions was not "scheduled until trial for January 2006." While that statement may have been accurate when made, after the Maine *Order* was released on September 13, 2005, Verizon moved to amend its complaint in federal district court, and filed a motion for preliminary injunction on September 22, 2005. While a decision has not yet been issued by the federal district court, the Authority should be mindful that the *Order* to which Covad wishes to direct its attention is the subject of an active appeal.

Covad's October 18, 2005 also referred to a July 14, 2005 *Reply Brief* filed by CompSouth. Covad characterized the language in that brief at page 2 as noting that BellSouth had intentionally misrepresented the applicable law. While CompSouth's July 14, 2005 *Reply Brief* claimed BellSouth "intentionally twisted the facts" it **did not** state BellSouth intentionally **misrepresented** anything.

The sequence of events that apparently causes CompSouth great angst was as follows:

1. BellSouth filed its *Motion for Summary Judgment*.
2. CompSouth filed a *Response* to that *Motion*. At page 12 of that *Response*, CompSouth quoted from Section 271(c)(1).
3. At page 12 of CompSouth's *Response*, following its quotation to Section 271(c)(1), CompSouth made the following statement: "Thus, the terms and conditions for the checklist items in § 271 must be in an approved interconnection agreement."
4. BellSouth filed its *Reply to CompSouth's Response to BellSouth's Motion for Summary Judgment*.
5. At page 12 of BellSouth's *Reply*, it cited to page 12 of CompSouth's *Response*. BellSouth stated that "The CLECs also argue that Section 271(c)(1) provides that 'the terms and conditions for the checklist items in Section 271 must be read in an approved interconnection agreement.'" BellSouth's authority for this statement was to CompSouth's *Response* at page 12.
6. CompSouth filed its *Response* to BellSouth's *Reply*.

7. CompSouth claims that BellSouth "intentionally twisted the facts" because BellSouth referred to Section 271(c)(1) as the basis for the CLEC argument about Section 271, instead of sub-paragraph (c)(2).

Having detailed the sequence of events, it is almost laughable that CompSouth has written its October 18, 2005 letter. BellSouth's *Reply Brief* accurately quoted CompSouth, and assumed that after CompSouth made the (legally incorrect) statement that "the terms and conditions for the checklist items in § 271 must be in an approved interconnection agreement, immediately following a block quotation setting forth the statutory language at § 271(c)(1), that CompSouth's argument relied upon Section 271(c)(1). Apparently, CompSouth's argument relied upon a different sub-paragraph. BellSouth does not intentionally misrepresent the law.

CompSouth then accuses BellSouth of yet making a "misleading assertion" taking exception to BellSouth pointing out language in the Maine *Order* that addressed UNE-Ps and Section 271. CompSouth's apparent dissatisfaction with BellSouth in this regard is based on its view that "the issue in Docket 04-00381 (Issue 14) is about BellSouth's 'commingling' obligations, not the FCC's combination rules." That may well be CompSouth's view, but it is one that BellSouth cannot agree to, and BellSouth's disagreement does not amount to acting in a "misleading" manner. The FCC addressed commingling at paragraph 579 of the *TRO*. In the FCC's own words, it stated: "By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more wholesale services." The FCC itself used the words "combining." In BellSouth's view, the Maine *Order's* discussion of UNE-P and Section 271 is relevant (although the *Order* on a whole is suspect) on this particular sub-issue because it is clear BellSouth is not required to commingle, combine, attach, connect, or any other verb, Section 251 UNEs and Section 271 network elements. BellSouth understands Covad feels differently. Nonetheless, Covad's feelings, or apparent wounded feelings, do not result in BellSouth misleading the Authority.

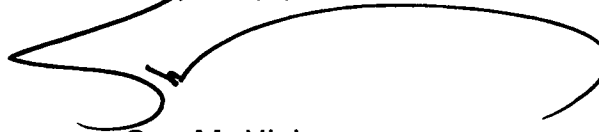
BellSouth will save the remainder of its legal arguments for its post-hearing brief in Docket No. 04-00381, due October 28, 2005. In that brief, BellSouth will

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provide the Authority with the citations of the decisions in Qwest's region in which Covad resoundingly lost its attempt to seek state commissions to exercise Section 271 authority.

The bottom line is that Covad's October 18 letter is simply legal argument. While Covad is entitled to advance its theories and arguments, it is wrong to suggest that those who point out flaws in those theories or citations in support for other positions are "misrepresenting" anything.

Very truly yours,

A handwritten signature in black ink, consisting of a large, sweeping loop that starts under the 'V' of 'Very' and ends under the 's' of 'yours'.

Guy M. Hicks

GMH:ch

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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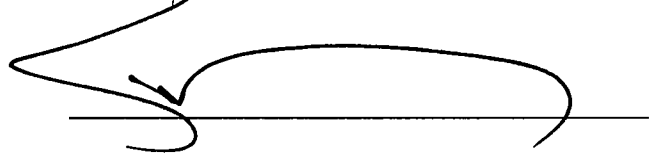
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A handwritten signature in black ink, appearing to be "Charles E. Watkins", is written over a horizontal line.